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HONORABLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GENERAL ELECTRIC CAPITAL
CORPORATION, a Delaware
corporation

Plaintiff,

vs.

M/V SPIRIT OF GLACIER BAY (EX M/V
SPIRIT OF NANTUCKET), Official No.
677685, her gear, furniture, equipment,
etc. *in rem*, WEST TRAVEL, INC. d/b/a
CRUISE WEST, a Washington
Corporation, and RICHARD G. WEST
and the marital community of Richard
West and Leslie West *in personam*

Defendants

) IN ADMIRALTY

) CAUSE NO.

) VERIFIED COMPLAINT *IN REM* AND
) *IN PERSONAM* TO FORECLOSE
) PREFERRED SHIP MORTGAGE

Plaintiff General Electric Capital Corporation ("GECC"), asserts claims against

VERIFIED COMPLAINT- 1

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1 defendants M/V SPIRIT OF GLACIER BAY, *in rem*, West Travel, Inc. d/b/a Cruise West
2 (“West Travel”) and Richard G. West and the marital community of Richard West and
3 Leslie West (“Defendant West”) in personam as follows:

4 **1) PARTIES**

5 1.1 Plaintiff GECC is a Delaware corporation doing business in Washington.

6 1.2 Defendant M/V SPIRIT OF GLACIER BAY The defendant vessel,
7 M/V/SPIRIT OF GLACIER BAY, Official Number 677685, (“Vessel”) is a vessel duly
8 documented under the laws of the United States. Said vessel is within this district and
9 within the jurisdiction of this Court. At all times material, defendant vessel was owned by
10 West Travel, Inc. a Washington corporation.
11

12 1.3 Defendant West Travel is a Washington corporation doing business in
13 Washington.

14 1.4 Defendant Richard G. West is a married man, residing with his wife,
15 Leslie West, on Mercer Island, Washington.

16 **2) JURISDICTION AND VENUE**

17 2.1 This is a matter of admiralty and maritime jurisdiction under 28 U.S.C.
18 1333 and 46 U.S.C. 31325, as more fully appears below. This is an admiralty or
19 maritime claim within the meaning of Rule 9(h).

20 2.2 Venue in this Court is appropriate pursuant to because the transactions
21 and events at issue in this dispute took place in King County, Washington and because
22 the defendants reside in King County, Washington, and the Vessel is located in this
23 division of this district.
24

25 **VERIFIED COMPLAINT- 2**

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3) **FACTS**

A. Loan Agreement and Note

3.1 On December 31, 2007, GECC and West Travel entered into a Loan and Security Agreement ("Loan Agreement"), pursuant to which GECC loaned West Travel the principal sum of Four Million Eight Hundred Thirty-Three Thousand Six Hundred Thirty-Eight and 0/100 (\$4,833,638.00) dollars (the "Principal Amount"), and also secured other obligations owed by defendants to Plaintiff and its affiliated companies.

Exhibit A.

3.2 West Travel's obligation to repay the loan is evidenced by a Promissory Note, dated December 31, 2007 (the "Note") in the Principal Amount. *Exhibit B.* Under the terms of the Note, West Travel promised to pay GECC the Principal Amount plus interest at a fixed simple interest rate of 7.33% per annum. The Principal Amount is payable in 120 consecutive monthly installments, 119 of which are in the amount of \$40,280.32 and a final installment in the amount of the total outstanding and unpaid principal due under the Note, plus accrued interest and any and all other amounts due. The first installment was due and payable on February 1, 2008 and the following installments are due on the first day of each succeeding month ("Payment Date"). In addition to the installment payments of principal provided in the Note, West Travel is obligated to pay interest in arrears on each Payment Date.

3.3 The Note provides that if GECC does not receive from West Travel payment in full of any installment due under the Note within ten (10) days after its due date, West Travel shall pay GECC a late fee ("Late Fee") equal to five percent (5%) on

1 such late installment, but not exceeding any lawful maximum. Such late fee is
2 immediately due and payable, and is in addition to any other costs, fees and expenses
3 that West Travel may owe as a result of such late payment.

4 3.4 The Note further provides that, among other events, (1) if West Travel
5 fails to make payment of any amount due under the Note within ten days after the same
6 becomes due or (2) if West Travel is in default after expiration of any applicable grace
7 period under any of the debt documents, then (among other remedies) the entire
8 principal sum remaining unpaid, together with all accrued interest thereon and any other
9 sum payable under the Note or any other debt document shall immediately become due
10 and payable at the election of GECC with interest thereon at the lesser of twelve
11 percent (12%) per annum or the highest rate not prohibited by applicable law from the
12 date of such accelerated maturity.
13

14 3.5 The obligations, duties and debts specified in the Note and Mortgage are
15 being foreclosed upon by this action. The remaining obligations, duties and debts
16 referenced under the Loan Agreement are subject to a separate pending state court
17 action.

18 3.6 GECC has performed as required under the Loan Agreement and Note.

19 3.7 West Travel has failed to make the payments of principal and interest
20 due under the Loan Agreement and Note for more than ten days and remains in default
21 after expiration of the applicable grace periods.
22

23 3.8 GECC has demanded payment of the entire principal sum remaining
24 unpaid and all accrued interest thereon and all other sums payable under the default
25

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provisions of the Loan Agreement and Note.

3.9 As of July 2010, the total amount West Travel owes GECC under the default provisions of the Loan Agreement and Note is not less than \$4,297,027.12.

3.10 West Travel has failed to pay this sum or any part thereof.

B. Defendant West's Guaranty

4.1 Defendant West executed and delivered to plaintiffs a Guaranty dated December 31, 2007.

4.2 Under the terms of the Guaranty, Mr. West guaranteed to plaintiffs the due regular and punctual payment of any sum or sums of money which West Travel may owe to plaintiff and certain affiliated entities identified in the Loan Agreement at any time, whether evidenced by the Loan Agreement, the Note, or otherwise.

4.3 Under the Guaranty, Mr. West further guaranteed to pay all losses, costs, reasonable attorneys' fees and reasonable expenses which may be suffered by any of the plaintiffs by reason of West Travel's default or the default of Defendant West.

4.4 Despite demand, Defendant West has failed to make the payments as he was required to do pursuant to the Guaranty and is therefore in actual and anticipatory breach of the Guaranty.

4) FIRST CAUSE OF ACTION

BREACH OF CONTRACT AGAINST WEST TRAVEL

5.1 Plaintiffs reallege paragraphs 1.1–4.4 as if fully set forth herein.

5.2 West Travel's actions constitute breach of contract, for which plaintiffs are entitled to damages.

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**5) SECOND CAUSE OF ACTION
PROMISSORY ESTOPPEL AGAINST WEST TRAVEL**

6.1 Plaintiffs reallege paragraphs 1.1–5.2 as if fully set forth herein.

6.2 West Travel made promises to pay which it should reasonably have expected would cause plaintiffs to change their positions.

6.3 Plaintiffs, to their detriment, justifiably relied on West Travel’s promises.

6.4 Injustice can be avoided only by enforcement of West Travel’s promises.

**6) THIRD CAUSE OF ACTION
BREACH OF CONTRACT AGAINST DEFENDANT WEST**

7.1 Plaintiffs reallege paragraphs 1.1–6.4 as if fully set forth herein.

7.2 Defendant West’s actions constitute breach of contract, for which plaintiffs are entitled to damages.

**7) FOURTH CAUSE OF ACTION
PROMISSORY ESTOPPEL AGAINST DEFENDANT WEST**

8.1 Plaintiffs reallege paragraphs 1.1–7.2 as if fully set forth herein.

8.2 Defendant West made promises to pay which he should reasonably have expected would cause plaintiffs to change their positions.

8.3 Plaintiffs, to their detriment, justifiably relied on Defendant West’s promises.

8.4 Injustice can be avoided only by enforcement of Defendant West’s promises.

8) FORECLOSURE OF PREFERRED SHIP MORTGAGE

9.1 Plaintiffs reallege paragraphs 1.1–8.4 as if fully set forth herein.

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1 9.2 For valuable consideration, defendant West Travel, Inc. made,
2 executed and delivered a Promissory Note ("Note") to General Electric Capital
3 Corporation. The Note, which was in the original principal amount of Four Million
4 Eight Hundred Thirty Three Thousand, Six Hundred Thirty Eight Dollars, plus interest
5 accruing at a rate of seven and 33/100 percent (7.33%) as set out in the Note and
6 late fees. A copy of the Note is attached hereto as *Exhibit B*, and incorporated herein
7 by this reference.

8 9.3 On or about December 21, 2007, in order to secure payment under the
9 terms of the Loan Agreement (*Exhibit A*) and Note, defendant West Travel, Inc., in
10 accordance with and pursuant to the provisions of the Ship Mortgage Act of 1920, as
11 amended, made, executed, and delivered a Preferred Mortgage of Vessel
12 ("Mortgage") to General Electric Capital Corporation as mortgagee in the amount of
13 Twenty-six Million Dollars (\$26,000,000.00). At that time, all things required to be
14 done in order to give the Mortgage the status of a preferred mortgage were done.
15 The Mortgage was recorded by the U.S. Coast Guard Vessel Documentation Service
16 on December 31, 2007, Document number 8214174, Batch number 618502. A copy
17 of the Mortgage is attached hereto as *Exhibit C*, and incorporated herein by this
18 reference.

19 9.4 The Mortgage requires that mortgagor maintain certain forms of insurance, and
20 to not permit maritime liens to accrue against the vessel. The Mortgagee is permitted
21 to procure and/or pay for said insurance if Mortgagor fails to do so, and to satisfy
22 maritime liens, and incur other expenses. Under the terms of the Mortgage, such
23
24
25

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1 reasonable costs and expenses are additional indebtedness secured by the
2 Mortgage, and to bear interest.

3 9.5 The records of plaintiff General Electric Capital Corporation indicate
4 that, as of September 10, 2010, there was a total of \$3,907,190.64 in principal,
5 \$237,748.80 interest, \$135,975.00 in default interest, \$16,112.16 in late charges due
6 under the Mortgage. There are or may be additional reasonable costs and expenses
7 incurred which are due under the Mortgage. Interest, costs, and costs of collection
8 are continuing to accrue.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, General Electric Capital Corporation prays for judgment as
11 follows:

12 A. That this Court decrees payment, jointly and severally, by West Travel
13 Inc. and the M/V SPIRIT OF GLACIER BAY, Official No. 677685, her appurtenances,
14 engines, machinery, equipment, tackle, furniture, etc. for the principal amount of the
15 debt owed General Electric Capital Corporation, plus interest, attorneys' fees, costs of
16 collection, insurance premiums, costs of maintaining the property, other allowable
17 charges, and court costs;

18 B. That this Court determine the relative priority of the maritime liens and
19 preferred ship mortgages of plaintiff and all interveners in accordance with the laws of
20 the United States, and direct payment from the proceeds of the sale of the
21 M/V/SPIRIT OF GLACIER BAY, accordingly;

22 C. That the maritime lien be foreclosed and said defendant M/V SPIRIT
23 OF GLACIER BAY, Official No. 677685, her appurtenances, engines, machinery,
24

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1 equipment, tackle, furniture, etc. be sold by the U.S. Marshal and the proceeds of the
2 sale be applied and delivered to pay demands and claims of in the amount and to
3 the extent as set forth herein, together with costs and attorneys' fees, and that it be
4 declared that any and all persons, firms or corporations claiming any interest in the
5 defendant vessel are forever barred and foreclosed of and from all rights of equity or
6 redemption or claim in and to the defendant vessel.

7 D. That in rem process in due form of the law issue against the defendant
8 vessel.

9 E. That at the sale of the M/V SPIRIT OF GLACIER BAY, Official No.
10 677685, by the U.S. Marshal, General Electric Capital Corporation be permitted to
11 bid, without cash deposit, its judgment, accrued interest, costs and attorneys' fees,
12 up to the full amount thereof.

13 F. For judgment entered against defendants West Travel, Inc. d/b/a Cruise
14 West, Richard G. West and the marital community of Richard G. West and Leslie
15 West for damages for all sums due under the Loan Agreement and the Note.
16 Plaintiffs are entitled to damages in an amount to be proven at trial.

17 G. For judgment against defendants West Travel, Inc. d/b/a Cruise West,
18 Richard G. West and the marital community of Richard G. West and Leslie West for
19 consequential damages in an amount to be proven at trial;

20 H. For an award of prejudgment interest and post-judgment interest;

21 I. For an award of plaintiffs' reasonable attorney fees and costs incurred
22 in pursuing this action; and
23
24
25

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1 J. That General Electric Capital Corporation have such other and further
2 relief as in law or equity it may be entitled to receive.

3 DATED this 29th day of September, 2010.

4 CAREW LAW OFFICE

5 /s/ Shane C. Carew

6 Shane C. Carew, WSBA No. 10988
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8 Seattle, WA 98136
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10 Fax: 206-587-2388
11 Email: shane@carewlaw.com
12 Attorney for Plaintiff

13 McNAUL EBEL NAWROT & HELGREN

14 /s/ Matthew J. Campos

15 Matthew J. Campos, WSBA 40777
16 600 University Street, Suite 2700
17 Seattle, WA 98101
18 Telephone: (206) 467-1816
19 Facsimile: (206) 624-5128
20 Email: mcampos@mcnaul.com
21 Attorneys for Plaintiffs

22
23
24
25 **VERIFIED COMPLAINT- 10**

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VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

Ramon Seranio, being first duly sworn upon oath, deposes and states:

1. I am a resident of the State of California and knowledgeable of, and competent to testify to, the matters below. I am a Vice President of General Electric Capital Corporation ("GECC"), and am authorized to issue this declaration on behalf of GECC, General Electric Credit Corporation of Delaware ("GECC Delaware"), and General Electric Credit Corporation of Georgia ("GECC Georgia") (GECC, GECC Delaware and GECC Georgia are sometimes referred to herein collectively as "GE Capital"). GECC Delaware and GECC Georgia are companies affiliated with GECC.

2. I have read the foregoing complaint, and the facts in the foregoing complaint are true and correct, to the best of my knowledge, information and belief.



Ramon Seranio

SUBSCRIBED AND SWORN to before me this 29 day of September, 2010.

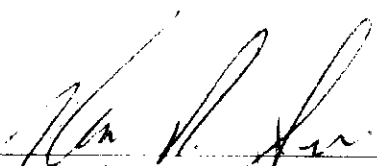
NOTARY PUBLIC in and for the State of
California, residing at _____
My Commission Expires:

VERIFIED COMPLAINT- 11

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CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)


 Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this

29th day of September, 2010, by
Date Month Year

(1) Ramon P. Serano
Name of Signer

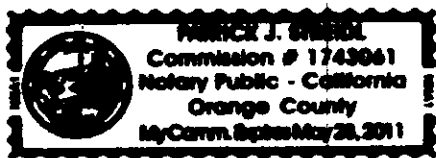
proved to me on the basis of satisfactory evidence
 to be the person who appeared before me (.) (.)

(and

(2) N/A
Name of Signer

proved to me on the basis of satisfactory evidence
 to be the person who appeared before me.)

Signature 
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

*Though the information below is not required by law, it may prove
 valuable to persons relying on the document and could prevent
 fraudulent removal and reattachment of this form to another document.*

Further Description of Any Attached Document

Title or Type of Document: Verification

Document Date: 9/29/2010 Number of Pages: 1

Signer(s) Other Than Named Above: N/A

